



Proposed Regulation Agency Background Document

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| Agency name | 47 |
| Virginia Administrative Code (VAC) citation | 18 VAC 47 -20 |
| Regulation title | Cemetery Board Regulations |
| Action title | Amend to implement changes to the Code of Virginia |
| Document preparation date | December 21, 2005 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Chapters 192 and 247 of the Acts of the 2004 General Assembly, which were the result of HB 857 and SB 303 respectively, require that changes be made to the current regulation. The new regulation establishes qualifications and standards of conduct for compliance agents employed by cemetery companies and also adds a section on protection of perpetual care and preneed trust funds.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2313.D states in part that the Board shall have the power and duty to regulate preneed burial contracts and perpetual care trust fund accounts and regulate sales personnel.

Section 54.1-2313.E states in part that the Board shall adopt such other regulations it deems appropriate. Section 54.1-201.E states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulation is mandatory to implement Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The new regulation establishes qualifications and standards of conduct for compliance agents employed by cemetery companies as well as standards of approval for training courses for compliance agents. It also provides a mechanism for protection of the perpetual care and preneed trust funds. The new regulation is necessary to implement Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly which were the result of HB 857 and SB 303. By providing a mechanism for protection of the trust funds and establishing qualifications and standards for compliance agents and training, compliance agents and the public they deal with know what is expected of them and they will be less likely to engage in improper or dishonest conduct therefore providing protection of the public's health, safety and welfare. The goal of the regulation is to establish qualifications and standards of conduct for compliance agents in accordance with SB 303 and to provide a mechanism for protection of the trust funds and appointment of a receiver in accordance with HB 857.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

These regulations are necessary to implement Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly, which were the result of HB 857 and SB 303, and to establish the qualifications and standards therein mandated.

The regulations provide:

- 1) Definitions of terms to be used in the regulations;
- 2) Qualifications for compliance agents and designees;
- 3) Standards for protection of perpetual care and preneed trust funds;
- 4) Standards of conduct for compliance agents and designees; and
- 5) Requirements for training courses.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the public and the agency is that the people will know what is expected of compliance agents and those who go through the training become more aware of the Cemetery laws and regulations and will be less likely to engage in behavior which may result in a complaint. Also, it provides a mechanism for the board to initiate legal proceedings to protect the perpetual care and preneed trust funds from wrongful acts by licensees thereby protecting the public.

The regulatory action poses no known disadvantages to the public or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | See below. |
| Projected cost of the regulation on localities | See below. |
| Description of the individuals, businesses or other entities likely to be affected by the regulation | See below. |
| Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | See below. |
| All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. | See below. |

Summary:

These regulatory changes will implement the requirements of HB 857 and SB 303 by establishing qualifications and standards of conduct for compliance agents and designees employed by cemetery companies as well as standards of approval for training courses for compliance agents and designees. The changes also provide a mechanism for protection of the perpetual care and pre-need trust funds. No fiscal impact is expected as a result of these regulatory changes.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

| | FY 2005 | FY 2006 | FY2007 | FY2008 |
|--------------------|------------|------------|------------|------------|
| Fund | NGF (0900) | NGF (0900) | NGF (0900) | NGF (0900) |
| Program/Subprogram | 560 44 | 560 44 | 560 44 | 560 44 |

| Impact of Regulatory Changes: | | | | |
|-------------------------------|------|------|------|------|
| One-Time Costs | 0 | 0 | 0 | 0 |
| Ongoing Costs | 0 | 0 | 0 | 0 |
| Total Fiscal Impact | 0 | 0 | 0 | 0 |
| FTE | 0.00 | 0.00 | 0.00 | 0.00 |

Description of Costs:

One-Time: There are no one-time costs associated with the proposed regulations.

Ongoing: There are no ongoing costs associated with the proposed regulations.

Cost to Localities: None anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: The regulations will provide increased protection to individuals who have family and friends interred at licensed cemetery companies. Increased standards will impact 93 regulated cemetery companies.

Estimated Number of Regulants: The Board currently regulates approximately 1,100 individuals and 93 companies.

Projected Cost to Regulants: No changes to regulant costs are anticipated as a result of this regulatory change.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly and the current Code of Virginia mandate amendment of the regulation. No alternatives have been identified to evaluate.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

| Commenter | Comment | Agency response |
|-----------|---------|-----------------|
| | | |

No comments were received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|------------------------|--|---------------------|--|
| 18 VAC 47-20-10 | | Definitions | Add definitions for approved training program and compliance agent designee to implement |

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| | | | changes required by SB 303. |
| | 18 VAC 47-20-35 | | Add section establishing qualifications for compliance agents & designees to implement changes required by SB 303. |
| 18 VAC 47-20-240 | 18 VAC 47-20-260 | Allows for appointment of receiver for execution of preneed contracts at need if the cemetery company license is suspended or revoked | Allows board to initiate legal proceedings to protect both the perpetual care and preneed trust funds if the board finds the licensee or its agent has committed any wrongful acts as described in the regulation and statute. This change expands the board's authority to protect the public from wrongdoing by a licensee or its agent pursuant to HB 857. |
| | 18 VAC 47-20-250 | | Add section establishing conduct for compliance agent and designee to implement changes required by SB 303. This is needed to ensure that Virginians are dealing with cemetery companies that comply with the law and regulation. |
| | 18 VAC 47-20-270 | | Add section which provides standards of approval for training courses needed for a person to become qualified as compliance agent or designee in order to implement changes required by SB 303. This is needed to ensure that courses provided to people with minimal experience get the education required to meet the qualifications in the regulation. |
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No changes were made to the emergency regulation since its publication.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly and the current Code of Virginia mandate amendment of the regulation. The agency considers the proposed changes as the least burdensome and no other alternatives were identified. The proposed regulations do not impact small businesses any differently than other businesses.